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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 (HONORABLE JANIS L. SAMMARTINO)

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 **ISAUL RODRIGUEZ-BANUELOS,**

15 Defendant.

) CASE NO. 08CR1177-JLS

)

) DATE: June 17, 2008

) TIME: 9:30 a.m.

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) STATEMENT OF FACTS AND

) MEMORANDUM OF POINTS AND

) AUTHORITIES IN SUPPORT OF

) DEFENDANT'S MOTIONS

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18 **I.**

19 **STATEMENT OF FACTS**

20 The following statement of facts and facts further cited in this motion are based primarily on the
21 probable cause statement. Mr. Rodriguez-Banuelos in no way admits the truth of these facts nor their
22 accuracy as cited in these motions. Further, Mr. Rodriguez-Banuelos reserves the right to challenge the
23 truth and accuracy of these facts in any subsequent pleadings or during any further proceedings.

24 On March 25, 2008 Border Patrol Agents, responding to a call from the Infrared Scope Operator,
25 spotted three individuals attempting to make their way north across Otay Lakes Road, near Jamul,
26 California. The individuals were gathered and questioned by Agents. According to the Probable Cause
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1 Statement provided by the government, Isaul Rodriguez Banuelos admitted to being a citizen and national
2 of Mexico without the proper immigration documents allowing him to be in the United States.

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4 **II.**

5 **MOTION TO COMPEL DISCOVERY**

6 Mr. Rodriguez-Banuelos moves this Court to compel the government to provide all additional
7 discovery to which he is entitled. This request is not limited to those items that the prosecutor knows of.
8 It includes all discovery listed below that is in the custody, control, care, or knowledge of any "closely
9 related investigative [or other] agencies." See United States v. Bryan, 868 F.2d 1032 (9th Cir. 1989).

10 (1) Brady Information. The defendant requests all documents, statements, agents' reports, and
11 tangible evidence favorable to the defendant on the issue of guilt and/or which affects the credibility of the
12 government's case. Under Brady v. Maryland, 373 U.S. 83 (1963), impeachment as well as exculpatory
13 evidence falls within the definition of evidence favorable to the accused. United States v. Bagley, 473 U.S.
14 667 (1985); United States v. Agurs, 427 U.S. 97 (1976).

15 (2) Any Proposed 404(b) Evidence. The government must produce evidence of prior similar
16 acts under FED. R. CRIM. P. 16(a)(1) and FED. R. EVID. 404(b) and any prior convictions which would be
17 used to impeach as noted in FED. R. CRIM. P. 609. In addition, under FED. R. EVID. 404(b), "upon request
18 of the accused, the prosecution . . . shall provide reasonable notice in advance of trial . . . of the general
19 nature" of any evidence the government proposes to introduce under FED. R. EVID. 404(b) at trial. The
20 defendant requests notice two weeks before trial to give the defense time to investigate and prepare for trial.

21 (3) Request for Preservation of Evidence. The defendant requests the preservation of all
22 physical evidence that may be destroyed, lost, or otherwise put out of the possession, custody, or care of the
23 government and which relate to the arrest or the events leading to the arrest in this case. This request
24 includes, but is not limited to, the results of any fingerprint analysis, the defendant's personal effects, and
25 any evidence seized from the defendant or any third party.

26 (4) Defendant's Statements. The defendant requests disclosure and production of all statements
27 made by the defendant. This request includes, but is not limited to, the substance of any oral statement made
28 by the defendant, FED. R. CRIM. P. 16(a)(1)(A), and any written or recorded statement made by the

1 defendant. FED. R. CRIM. P. 16(a)(1)(B)(I)-(iii), as well as any rough notes taken by the agents during the
2 questioning of Mr. Rodriguez-Banuelos.

3 (5) Tangible Objects. The defendant seeks to inspect and copy as well as test, if necessary, all
4 other documents and tangible objects, including photographs, books, papers, documents, alleged narcotics,
5 fingerprint analyses, vehicles, or copies of portions thereof, which are material to the defense or intended
6 for use in the government's case-in-chief or were obtained from or belong to the defendant. FED. R. CRIM.
7 P. 16(a)(1)(E).

8 (6) Expert Witnesses. The defendant requests the name, qualifications, and a written summary
9 of the testimony of any person that the government intends to call as an expert witness during its case in
10 chief. FED. R. CRIM. P. 16(a)(1)(G).

11 (7) Witness Addresses. The defendant requests access to the government's witnesses. Thus,
12 counsel requests a witness list and contact phone numbers for each prospective government witness.
13 Counsel also requests the names and contact numbers for witnesses to the crime or crimes charged (or any
14 of the overt acts committed in furtherance thereof) who will not be called as government witnesses.

15 (8) Jencks Act Material. Mr. Rodriguez-Banuelos requests production in advance of trial of
16 material discoverable under the Jencks Act, 18 U.S.C. § 3500. Advance production will avoid needless
17 delays at pretrial hearings and at trial. This request includes any "rough" notes taken by the agents in this
18 case. This request also includes production of transcripts of the testimony of any witness before the grand
19 jury. See 18 U.S.C. § 3500(e)(1)-(3).

20 (9) Informants and Cooperating Witnesses. Mr. Rodriguez-Banuelos requests disclosure of the
21 name(s), address(es), and location(s) of all informants or cooperating witnesses used or to be used in this
22 case, and in particular, disclosure of any informant who was a percipient witness in this case or otherwise
23 participated in the crime charged against Mr. Rodriguez-Banuelos. Roviaro v. United States, 353 U.S. 53,
24 61-62 (1957). The government must disclose any information derived from informants which exculpates
25 or tends to exculpate Mr. Rodriguez-Banuelos. Brady v. Maryland, 373 U.S. 83 (1963). The government
26 must disclose any information indicating bias on the part of any informant or cooperating witness. Id.
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1 (10) Residual Request. Mr. Rodriguez-Banuelos intends by this discovery motion to invoke his
2 rights to discovery to the fullest extent possible under the Federal Rules of Criminal Procedure and the
3 Constitution and laws of the United States.

4 **III.**

5 **MOTION FOR LEAVE TO FILE FURTHER MOTIONS**

6 Mr. Rodriguez-Banuelos and defense counsel have received limited discovery in this case. Once
7 discovery is produced and counsel has had an opportunity to review it, and to conduct her own
8 investigation, the defense may need to file further motions, or to supplement existing motions.

9 **IV.**

10 **CONCLUSION**

11 For the reasons stated, Mr. Rodriguez-Banuelos respectfully requests this Honorable Court grant
12 his motions.

13 Respectfully submitted,

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15 Dated: June 5, 2008

/s/ Linda Lopez
LINDA LOPEZ
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Attorneys for Mr. Rodriguez-Banuelos
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CERTIFICATE OF SERVICE

Counsel for Defendant certifies that the foregoing pleading is true and accurate to the best of her information and belief, and that a copy of the foregoing document has been served this day upon:

Caleb Mason
Caleb.Mason@usdoj.gov

Dated: June 5, 2008

/s/ Linda Lopez
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